

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Brief March 9, 2007

**JAMES LEVERETTE v. WILLIAM DALTON ET AL.**

**Appeal from the Circuit Court for Davidson County**  
**No. 05C-2157     Walter Kurtz, Judge**

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**No. M2005-02333-COA-R3-CV - Filed on July 23, 2007**

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This is an appeal from the dismissal of a prisoner's complaint for failure to remit the required filing fee. After being denied parole, the prisoner filed a petition in the Circuit Court for Davidson County seeking judicial review of the denial of parole. In accordance with a statutory mandate, the prisoner submitted a certified copy of his inmate trust account for a determination of the partial filing fee that would be required before his claim could proceed. However, the trial court dismissed the petition because the prisoner failed to remit any portion of the required fee. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

James Leverette, Mountain City, Tennessee, Pro Se.

**MEMORANDUM OPINION<sup>1</sup>**

James Leverette is an inmate at the Northeast Correctional Complex, a maximum security prison in Mountain City, Tennessee. Mr. Leverette became eligible for parole in late 2004. He attended a parole hearing on November 29, 2004, and on December 20, 2004, the Tennessee Board of Probation and Parole ("Board") declined to parole him. The Board cited the seriousness of the offense that he had committed as reason for the denial.<sup>2</sup> The Board also determined that Mr. Leverette would next be eligible for parole in 2010. Mr. Leverette pursued an administrative appeal

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<sup>1</sup>Tenn. Ct. App. R. 10 provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

<sup>2</sup>The record does not indicate the offense for which Mr. Leverette is incarcerated.

from the denial of parole,<sup>3</sup> but he was afforded no relief. On July 20, 2005, Mr. Leverette filed a petition for common-law writ of certiorari in the Circuit Court for Davidson County seeking review of the Board's action.<sup>4</sup>

In an attempt to weed out malicious and frivolous claims, the Tennessee General Assembly has adopted special requirements that apply to prisoners who file civil cases.<sup>5</sup> Prisoners who desire to proceed without prepayment of necessary fees must file a certified copy of their trust fund account statements, reflecting six months worth of their financial transactions during incarceration.<sup>6</sup> Additionally, prisoners seeking to proceed in forma pauperis are required to pay a partial filing fee of twenty percent of the greater of (1) the average monthly deposits to the prisoner's account or (2) the average monthly balance in the account for the six months prior to the institution of the suit.<sup>7</sup>

Mr. Leverette requested permission from the trial court to proceed with his claim in forma pauperis. His trust account statement showed that, as of June 27, 2005, Mr. Leverette had \$13.02 in his account. For the six months preceding July 8, 2005,<sup>8</sup> Mr. Leverette's average monthly balance was \$49.07, and the average monthly deposits to his accounts totaled \$190.55. Mr. Leverette did not submit any payment – partial or otherwise – with his filing. On July 25, 2005, the trial court issued an order finding that Mr. Leverette had failed to submit partial payment of the \$42.50 total filing fee. The trial court granted Mr. Leverette twenty days to comply with the payment requirement.

On August 4, 2005, Mr. Leverette filed a motion with the court in which he offered to pay the court in monthly installments of five dollars, although the record does not indicate that he remitted any funds with the filing of his motion. Mr. Leverette also suggested that the court should order the Tennessee Department of Correction to collect and forward a percentage of his trust fund account deposits in order to secure the required partial filing fee. On August 15, 2005, the trial court entered an order dismissing Mr. Leverette's claim for failure to remit the required partial payment of the filing fee. Mr. Leverette has appealed.

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<sup>3</sup> See Tenn. Code Ann. § 40-28-105(d)(11) (2006).

<sup>4</sup> There is no indication in the record that Mr. Leverette caused the defendants to be served with notice of his petition. Consequently, the Attorney General's office was uninvolved with the matter at the trial court level and has elected not to file a brief on appeal. Contemporaneously with his filing in Davidson County, Mr. Leverette filed an identical petition in the Circuit Court for Johnson County, with which the Attorney General's office did become involved. On appeal, the Johnson County petition was dismissed for Mr. Leverette's failure to file a brief. *Leverette v. Dalton*, No. E2005-02880-COA-R3-CV (Tenn. Ct. App. Order filed Aug. 4, 2006).

<sup>5</sup> See Tenn. Code Ann. §§ 41-21-801 through -818 (2006).

<sup>6</sup> Tenn. Code Ann. § 41-21-807(a).

<sup>7</sup> Tenn. Code Ann. § 41-21-807(b)(1).

<sup>8</sup> Mr. Leverette's trust fund account statement was generated on July 8, 2005.

Tenn. Code Ann. § 41-21-807(b)(1) requires the court to collect at least a partial payment of any court fees required by law before an indigent inmate's claim can proceed. That amount is determined by assessing twenty percent of the greater of the inmate's average monthly deposits or average monthly balance for the six months preceding the filing of the claim. When Mr. Leverette filed his claim, his inmate trust account statement detailed average monthly deposits of \$190.55. Accordingly, Mr. Leverette owed the court \$38.11 as partial payment on the filing fee.<sup>9</sup> He did not remit to the court any payment at all, even though he had \$13.02 in his account that he could have paid at that time. One month later, by which time Mr. Leverette would have presumably received more income, the court issued an order giving Mr. Leverette twenty additional days to remit payment. Still Mr. Leverette withheld payment of any sort, and he offered no explanation for why he was unable to comply with the payment as required by law. While it is true that a court will order the agency having custody of an inmate to forward payments from the inmate's account to the clerk of court to complete payment of a filing fee, Tenn. Code Ann. § 41-21-807(b)(2), this provision only takes effect after the inmate has completed payment of the initial partial filing fee. The trial court properly dismissed Mr. Leverette's claim for failure to remit the required partial filing fee. We affirm the judgment of the trial court and tax costs to Mr. Leverette.

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WILLIAM C. KOCH, JR., P.J., M.S.

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<sup>9</sup>\$190.55 x 20% = \$38.11.